

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.687 OF 2005

Jagdish R. Agarwal, age 61 yrs.)
M/s.Sahakar Video Center)
9, Sankalp Society, Pushpa)
Park, road No.2, Daftary Road,)
Malad (East), Mumbai 400 097)...Petitioner

Versus

1. The State of Maharashtra)
through the Hon'ble)
Minister for Home,)
Mantralaya,Mumbai 400032)
2. The Commissioner of)
Police, Theater Branch)
Brihanmumbai, Mumbai.)...Respondents

Mr.S.P.Kanuga with Mr.Hitesh P.Vyas, Advocate for the
Petitioner.

Mr.I.S.Thakur, APP for the Respondents.

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.
27th April, 2005

P.C.:

1. Heard. Rule. By consent the rule is made returnable forthwith.

2. The Petitioner challenges the order passed by the authorities under the Bombay Cinema (Regulation) Act, 1953, hereinafter called as "the said Act", rejecting the licence for establishment of Video Center. Undisputedly though initially the licence was rejected on various grounds, at the appeal stage, the rejection is essentially on the ground that Video Center is located within the range of 40 meters from temple and on the ground that there are complaints from the residents of the locality for establishment of the proposed Video Center.

2. The learned advocate for the petitioner has submitted that the rules which are in force in relation to the licence to be granted for the purpose of establishment of Video Center nowhere require that the Video Center should be beyond the range of 40 meters for any religious place. He has further submitted that apart from mere observation that there are complaints from the residents of the locality, the appellate authority has not at all considered the nature of the grievance, if any, made in the complaints for the purpose of rejection of the application of the petitioner. In short the contention of the petitioner is that there has been no proper application of mind while rejecting the licence for the purpose of establishment of Video Cinema.

3. The learned APP placing reliance on Circular dated 14th May 1985 has submitted that in terms of the said Circular no permission for establishment of Video Center or Cinema can be granted once it is revealed that such Video Cinema proposed to be established is situated within the range of 61 meters from any religious place and undisputedly the proposed Video Center lies within the distance of 40 meters from the temple situated in

the locality.

4. As far as Circular dated 14th May 1985 is concerned undisputedly apart from issuing the said Circular there has been no compliance of the provision of Sec.9(5) of the said Act nor there is any legal sanctity to the said Circular nor the same forms part of the Rules framed under the said Act. Being so, taking resort to the said Circular, the authorities are not entitled to reject the application for establishment of Video Center. Indeed as rightly submitted by the learned advocate for the petitioner there is no provision of law which debars establishment of Video Center within the range of 40 meters from religious place or even at any lesser distance. In fact rule pertaining to the distance which is comprised under Rule 3 of the Maharashtra Cinema (Regulation) Rules 1966 relates to information to be furnished by the applicant to the authorities in order to enable the latter to consider the objections from the persons residing in the locality. It does not speak of any bar for establishment of any Video Cinema within any specified distance from any religious place as such. Beings so, the rejection of the application on the ground that

proposed video cinema is situated within 40 meters from the temple cannot be sustained and is liable to be set aside.

5. As regards the findings that there are complaints of local people and the rejection on that count also cannot be sustained, as mere filing of the complaint by the local people cannot be justification for rejection of the licence. The authority has to consider the complaint and ascertain whether there is any substance in the complaint and whether on the basis of those complaints the application can be rejected.

6. In the result the impugned order is hereby quashed and set aside and the matter is remanded to the concerned authority to decide the application afresh within a period of three weeks from the first date of the hearing and for that purpose the petitioner shall appear before the Deputy Commissioner of Police, H.Q., Mumbai at 11.30 a.m. on 5th May 2005. Rule is made absolute accordingly with no order as to costs.

(R.M.S.Khandeparkar, J.)

(P.V.Kakade, J.)